

Range Systems Engineering Support and Local Union No. 767, Laborers' International Union of North America, AFL-CIO, Petitioner. Case 12-RC-8172

September 16, 1998

ORDER DENYING REVIEW

BY MEMBERS FOX, HURTGEN, AND BRAME

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel, which has considered the Petitioner's request for review of the Regional Director's Decision and Order (pertinent portions are attached as an appendix).¹ The request for review is denied as it raises no substantial issues warranting review.

APPENDIX

REGIONAL DIRECTOR'S DECISION AND ORDER

Upon the entire record in this proceeding,⁴ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. Range Systems Engineering Support, hereinafter called the Employer, incorporated in Delaware and a subsidiary of Raytheon Service Company, is engaged in operating a military weapons testing facility in Andros Island, the Bahamas, pursuant to a contract with the United States Navy. The Employer is an employer engaged in commerce within the meaning of the Act.

The Petitioner seeks to represent a group of the Employer's employees who are assigned to work on Andros Island, a sovereign territory of the Commonwealth of the Bahamas. Contrary to the Petitioner, the Employer contends that the Board is without jurisdiction to direct an election among these employees who work in a foreign territory.

As indicated above, the Employer has a contract with the United States Navy to perform services for a military weapons testing facility or "range" on Andros Island in the Bahamas. The facility is involved in air, surface, and subsurface testing of military weapons systems. The Employer operates all of the instrumentation and support of the range including radar systems, underwater systems, tracking systems, and acoustic systems. The Employer gathers data from the testing operations, processes that information and provides it to the U.S. Navy. The range is also used by the British Navy and Canadian Navy.

¹ The issues the Petitioner raised in its request for review are whether the Regional Director erred in finding that the Board does not have jurisdiction over the Employer's military weapons testing operations in the Bahamas; and whether the Regional Director erred in granting the Employer's motion to strike the Petitioner's posthearing submission of documents.

⁴ The briefs of the parties have been carefully considered. With its posthearing brief, the Petitioner submitted documents from the Internet relating to the Atlantic Undersea Test and Evaluation Center. In response, the Employer filed "Employer's Motion To Strike Exhibits From Petitioner's Post-Hearing Brief." Inasmuch as the documents were not introduced during the hearing and the Petitioner has not moved to reopen the record or otherwise demonstrated how these documents may now be appropriately added to the record, I am granting the Employer's motion.

While the facility has been operating for several years, the Employer assumed full responsibility of the facility on April 1, 1997. The facility is called the Atlantic Undersea Test and Evaluation Center of "AUTEC" and is leased by the United States Government from the Bahamas pursuant to an agreement which sets forth the terms between the two countries regarding the AUTEC facility.⁵ The military testing at AUTEC often takes place on ships owned by the United States Government. Pursuant to a contract with the Employer, Mar Range Services LLC operates and maintains the vessels used for the military weapons testing; these services are performed primarily in Bahamian waters.

Andros Island is located approximately 177 miles from West Palm Beach, Florida. AUTEC occupies about one square mile of the island. The rest of the island is occupied by local inhabitants and is not involved in military testing operations. The island is accessible by a civilian air strip located on the island outside the AUTEC facility. All persons entering and leaving the island, must go through Bahamian customs. All visitors to AUTEC must be authorized to enter. In addition, many employees must have security clearance due to the classified nature of military weapons systems.

The Employer is managed by a project manager who has an office in West Palm Beach, Florida, and on Andros Island. When the project manager is away from the island, a base support manager who works on the island is in charge. The West Palm Beach office provides ancillary support for AUTEC including financing, accounting, and engineering. Some of the employees who work at West Palm Beach are transferred to Andros Island for temporary assignments.⁶ It appears that employees who work in West Palm Beach do not have the same benefits as the employees working on Andros Island.

There are Navy personnel at both West Palm Beach and Andros Island. An Officer in Charge from the Navy has overall responsibility over the AUTEC facility and coordinates the functions of the facility with the Employer's management. The Officer in Charge also coordinates with Bahamian officials regarding local affairs. There are about 20 military personnel permanently stationed at Andros Island. Naval personnel perform various functions including those of the range safety officer and running the U.S. post office located at the facility.

The Employer employs about 350 U.S. citizens and 150 Bahamian nationals.⁷ U.S. citizens who are employed at the AUTEC claim Bahamian residency for tax purposes. All of the employees who are United States citizens are permanently assigned to Andros Island and live on the island full-time. The record revealed that some employees, mainly divers,⁸ occasionally return to various locations in the United States for temporary duty. Employees also receive training in both the United States and in the Bahamas.

The Employer provides all employees, including Bahamian nationals, with housing, food, daycare, medical, religious, child care and recreational services. Food and housing are paid for by

⁵ The agreement is incorporated into the contract between the U.S. Navy and the Employer. That contract between the Navy and the Employer is otherwise largely not included in the record; however, the agreement between the United States and the Bahamas is in evidence.

⁶ The employees at West Palm Beach are unrepresented, and the Petitioner does not seek to include them as part of the unit.

⁷ The Bahamian employees hold many different positions including maids, nurses, engineers, and clericals.

⁸ The record revealed that there are six divers.

the Navy. It appears the employees are eligible for workers' compensation benefits under the Longshoremen's Act, and the Employer contributes unemployment benefits in Florida for terminated employees. While the Employer makes Social Security deductions from the employees' wages, the employees do not pay U.S. income taxes for work performed on the island. Employees are hired in West Palm Beach, and payroll work is performed in Massachusetts.

The contract between the Employer and the U.S. Navy requires that several safety and environmental regulations be followed. The Employer employs a manager of environmental safety and health who is responsible for compliance with the contract. Some of these regulations are similar to or the same as regulations under the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA), but it appears that neither OSHA nor the EPA has asserted jurisdiction over operations at the AUTECH facility. The Navy periodically conducts inspections to monitor compliance with these regulations. The safety regulations are monitored by the Naval Undersea Warfare Center or "NUWC" located in Newport, Rhode Island. The environmental regulations are monitored by NAVAIR, a division of the Navy located in Washington, D.C., which deals with the air operations.

The Employer prepares a Material Safety Data (MSDA) sheet for employees, as do employers covered by OSHA, which contains information concerning the risks and instructions for potentially hazardous materials used at the AUTECH facility. Manufacturers who send products to the AUTECH also include MSDA sheets with their packages. In addition, the Employer conducts training for employees regarding the MSDA sheets.

In addition, the contract between the Navy and the Employer requires that inspectors from the State of Florida periodically inspect the food services on the island. The record also revealed that the Employer owns and operates several aircraft which must receive certification from the Federal Aviation Administration (FAA) in order to allow the aircraft to transport any United States Government employees.

The agreement between the United States and the Commonwealth of the Bahamas for the operation of the facility has a "General Description of Rights" section wherein it states, among other things, that:

1. The United States may take such measures within the sites and within the seabeds, waters and air space adjacent to the sites as may be necessary for the establishment, use, operation and protection thereof or appropriate for the control thereof.

Section 2, of the "General Description of Rights" section sets forth all of the rights covered under Section 1. Section 2(c) states, among other things, that:

2. These measures shall include the right:

(c) to regulate, so far as may be required for safety and the efficient operation of the sites, and within the limits set forth in paragraph 1 above, anchorages, moorings, and movements of ships and waterborne craft and the anchorages, moorings, landings, take-offs, movement and operations of aircraft;

Another article called "General Obligations," states, among other things, that:

Save as expressly provided in this Agreement, nothing herein shall be so construed as to impair the authority of

the Government of the Bahamas with regard to the affairs of the Bahamas.

The agreement also provides that criminal jurisdiction is shared between the United States and the Bahamas. If the United States flag is flown at the facility, the Bahamian flag must also be flown. All vehicles must be registered in the Bahamas, but U.S. drivers' licenses are honored. With respect to labor issues, the agreement provides that all locally hired employees must be employed under terms and conditions of employment no less than provided for under Bahamian law or in place by international convention adopted by both governments.

Based upon the foregoing, and the record as a whole, I find that the Board is without jurisdiction in this matter, and the petition must be dismissed.⁹ The Supreme Court and the Board have ruled that the Act does not apply outside the United States unless the United States has obtained sovereignty or some measure of legislative control in the foreign territory. See *E.E.O.C. v. Arabian American Oil Co.*, 499 U.S. 244, 248 (1991); *State Bank of India*, 229 NLRB 838, 841 (1977).

It is clear that the United States has no sovereignty over Andros Island which is owned by the Commonwealth of the Bahamas. The agreement between the United States and the Bahamas gives the United States certain rights with respect to the operation of military installations in the Bahamas. I am, however, unable to conclude that the United States has sufficient legislative control on the military installation to support a finding that the Board has jurisdiction over the employees working on Andros Island.

Moreover, the present case is very similar to *Computer Sciences Raytheon*, 318 NLRB 966 (1995), wherein the Board concluded that it did not have jurisdiction over employees of American companies working at military bases in foreign territories. See also *GTE Automatic Electric, Inc.*, 226 NLRB 1222 (1976); *RCA OMS, Inc.*, 202 NLRB 228 (1973). Contrary to the Petitioner, I do not agree that *Computer Sciences Raytheon* is materially distinguishable from the instant case because it involved a military base not a military weapons testing facility. Rather, I conclude that the differences between a military base and a military installation do not affect the central issue of whether or not the Board has statutory jurisdiction.

While the Petitioner argues that there is interchange of employees between the AUTECH facility and West Palm Beach, Florida, I am unable to conclude that this evidence warrants asserting jurisdiction herein. In this regard, I note that the record evidence indicates that this interchange affects a small number of employees. The Petitioner argues that since several laws of the United States already apply to the employees of the AUTECH facility, so should the National Labor Relations Act. The record indicates that the Employer follows certain United States laws; however the record does not support the conclusion that other U.S. agencies apply laws which, like ours, may not be given extraterritorial application to employees at the AUTECH facility.

⁹ I decline to decide the issue of whether or not the Board has jurisdiction over the small number of employees of the Employer who work on vessels, including but not limited to divers, because they may be employed on U.S. flag vessels. If the Petitioner seeks to represent these employees separately, it may seek to do so by filing a new petition to represent them.

With respect to the Petitioner's argument that all United States civil laws apply at the AUTECH facility pursuant to a provision in the agreement titled "Civil Claims," I cannot agree with that conclusion. The provision in question essentially states that the United States shall compensate for meritorious claims which arise out of the acts or omissions of AUTECH employees or military personnel. This provision is intended to require the United States to waive its sovereign immunity in

cases of negligence and other tort claims involving acts or omissions by employees or military personnel at the AUTECH facility. This provision cannot be interpreted to give the Board jurisdiction under the National Labor Relations Act.

In these circumstances, it appears that asserting jurisdiction herein is unwarranted. and I shall, therefore, dismiss the petition.